

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Samuel Zarian,**

Plaintiff,

v.

**SLD Properties, Inc.**, a California  
Corporation;  
**Best Bits & Bytes, Inc.**, a California  
Corporation; and Does 1-10,  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Samuel Zarian complains of Defendants SLD Properties, Inc., a California Corporation; Best Bits & Bytes, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He suffers from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

2. Defendant SLD Properties, Inc. owned the real property located at or about 12104 Sherman Way, North Hollywood, California, in April 2018.

1       3. Defendant SLD Properties, Inc. owns the real property located at or  
2 about 12104 Sherman Way, North Hollywood, California, currently.

3       4. Defendant Best Bits & Bytes, Inc. owned the Game Dude located at or  
4 about 12104 Sherman Way, North Hollywood, California, in April 2018.

5       5. Defendant Best Bits & Bytes, Inc. owns the Game Dude located at or  
6 about 12104 Sherman Way, North Hollywood, California, currently.

7       6. Plaintiff does not know the true names of Defendants, their business  
8 capacities, their ownership connection to the property and business, or their  
9 relative responsibilities in causing the access violations herein complained of,  
10 and alleges a joint venture and common enterprise by all such Defendants.  
11 Plaintiff is informed and believes that each of the Defendants herein,  
12 including Does 1 through 10, inclusive, is responsible in some capacity for the  
13 events herein alleged, or is a necessary party for obtaining appropriate relief.  
14 Plaintiff will seek leave to amend when the true names, capacities,  
15 connections, and responsibilities of the Defendants and Does 1 through 10,  
16 inclusive, are ascertained.

17  
18       **JURISDICTION & VENUE:**

19       7. The Court has subject matter jurisdiction over the action pursuant to 28  
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
23 of action, arising from the same nucleus of operative facts and arising out of  
24 the same transactions, is also brought under California's Unruh Civil Rights  
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26       9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
27 founded on the fact that the real property which is the subject of this action is  
28 located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

10. Plaintiff went to Game Dude in April 2018 to shop.

11. Game Dude is a facility open to the public, a place of public accommodation, and a business establishment.

12. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of Game Dude.

13. Unfortunately, there were no van-accessible parking stalls marked and reserved for persons with disabilities on the day of plaintiff's visit.

14. The only parking stalls reserved for persons with disabilities measured 96 inches in width while the access aisle measured 74 inches at its widest on the day of plaintiff's visit. These are not van accessible.

15. On information and belief, Plaintiff alleges that the defendants once had a compliant van accessible parking space marked and reserved for persons with disabilities. Unfortunately, the van-accessible parking space that once existed was allowed to fade or get paved over.

16. Many of the parking spaces ostensibly reserved for persons with disabilities had faded International Symbol of Accessibility logos and many of the old access aisles had faded. Customers are now able to park in the old access aisles with impunity.

17. In fact, an SUV without handicap plates or a placard was parked in one of the old access aisles during plaintiff's visit.

18. The Defendants had no policy or plan in place to make sure that the parking spaces reserved for persons with disabilities remained useable prior to plaintiff's visit.

19. The Defendants have no policy or plan in place to make sure that the parking spaces reserved for persons with disabilities remain useable, currently.

20. Defendants have failed to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to

1 and usable by persons with disabilities at the Subject Property.

2 21. Plaintiff personally encountered these barriers.

3 22. This inaccessible parking lot denied the plaintiff full and equal access  
4 and caused him difficulty, discomfort, and embarrassment.

5 23. Transaction counters are another one of the facilities, privileges, and  
6 advantages offered by Defendants to patrons of Game Dude.

7 24. Meanwhile, and even though plaintiff did not personally confront the  
8 barrier, the transaction counter at Game Dude is more than 36 inches in  
9 height. In fact, the transaction counter is 46 inches high.

10 25. There is no lowered, 36 inch portion of the transaction counter at Game  
11 Dude for use by persons in wheelchairs.

12 26. Plaintiff plans to return and patronize Game Dude but will be deterred  
13 from visiting until the defendants remove the barriers.

14 27. The defendants have failed to maintain in working and useable  
15 conditions those features required to provide ready access to persons with  
16 disabilities.

17 28. The barriers identified above are easily removed without much  
18 difficulty or expense. They are the types of barriers identified by the  
19 Department of Justice as presumably readily achievable to remove and, in fact,  
20 these barriers are readily achievable to remove. Moreover, there are numerous  
21 alternative accommodations that could be made to provide a greater level of  
22 access if complete removal were not achievable.

23 29. For example, there are numerous paint/stripe companies that will come  
24 and stripe a van accessible parking stall and access aisle and install proper  
25 signage on rapid notice, with very modest expense, sometimes as low as \$300  
26 in full compliance with federal and state access standards.

27 30. Another common barrier removal project is modifying transaction  
28 counters to make a portion of the counter accessible. This is a simple

1 construction task, well within the capabilities of any general contractor. The  
2 task can be completed easily and for a modest price.

3 31. Plaintiff is and has been deterred from returning and patronizing Game  
4 Dude because of his knowledge of the barriers that exist. Plaintiff will,  
5 nonetheless, return to the business to assess ongoing compliance with the  
6 ADA and will return to patronize Game Dude as a customer once the barriers  
7 are removed.

8 32. Given the obvious and blatant nature of the violations and barriers  
9 alleged herein, the plaintiff alleges, on information and belief, that there are  
10 other violations and barriers on the site that relate to his disability. Plaintiff will  
11 amend the Complaint to provide proper notice regarding the scope of this  
12 lawsuit once he conducts a site inspection. However, please be on notice that  
13 the plaintiff seeks to have all barriers related to his disability remedied. See  
14 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
15 encounters one barrier at a site, he can sue to have all barriers that relate to her  
16 disability removed regardless of whether he personally encountered them).

17  
18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
19 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 33. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint.

24 34. Under the ADA, it is an act of discrimination to fail to ensure that the  
25 privileges, advantages, accommodations, facilities, goods and services of any  
26 place of public accommodation is offered on a full and equal basis by anyone  
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
28 § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

35. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in every eight of those accessible parking spaces but not less than one must be a “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

36. Here, the failure to provide a van accessible parking is a violation of the law.

37. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify

1 as a reserved handicap parking space, the space must be properly marked and  
2 designated. Under the ADA, the method, color of marking, and length of the  
3 parking space are to be addressed by State or local laws or regulations. See 36  
4 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly  
5 and effectively reserve a parking space for persons with disabilities, each  
6 parking space must be at least 216 inches in length. CBC § 11B-502.2 Under  
7 the California Building Code, to properly and effectively reserve a parking  
8 space for persons with disabilities, each such space must be identified with a  
9 reflectorized sign permanently posted adjacent to and visible from each stall  
10 or space. CBC § 1129B.4. The sign must consist of the International Symbol  
11 of Accessibility (♿) in white on a blue background. Id. It cannot be smaller than  
12 70 square inches and must be mounted so that there is a minimum of 80 inches  
13 from the bottom of the sign to the parking space. Id. Signs must be posted so  
14 that they cannot be obscured by a vehicle parking in the space. Id. An  
15 additional sign or additional language below the symbol of accessibility must  
16 state, “Minimum Fine \$250” to ensure that the space remains available for  
17 persons with disabilities. Id. Another sign must be posted in a conspicuous  
18 place at the entrance to the parking lot or immediately adjacent to each  
19 handicap parking space, with lettering 1 inch in height, that clearly and  
20 conspicuously warn that unauthorized vehicles parking in the handicap  
21 parking spaces can be towed at the owner’s expense. Id. Additionally, the  
22 surface of the handicap parking stall must have a profile view of a wheelchair  
23 occupant (♿) that is 36 inches by 36 inches. Id. And the surface of the access  
24 aisle must have a blue border. CBC § 1129B.3. The words “NO PARKING” in  
25 letters at least a foot high must be painted on the access aisle. Id.

26 38. Here, there was no blue border around an access aisle or parking space,  
27 there was no “NO PARKING” lettering, faded striping, no fine language, and  
28 the parking simply failed to comply.

39. In areas used for transactions where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the floor. 1991 Standards § 7.2(1). Under the 2010 Standards, where the approach to the sales or service counter is a parallel approach, such as in this case, there must be a portion of the sales counter that is no higher than 36 inches above the floor and 36 inches in width and must extend the same depth as the rest of the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

40. Here, no such accessible counter has been provided in violation of the ADA.

41. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

42. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

43. Given its location and options, plaintiff will continue to desire to patronize Game Dude but he has been and will continue to be discriminated against due to the lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

## **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

44. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of  
2 every kind whatsoever within the jurisdiction of the State of California. Cal.  
3 Civ. Code §51(b).

4 45. The Unruh Act provides that a violation of the ADA is a violation of the  
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 46. Defendants' acts and omissions, as herein alleged, have violated the  
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
8 rights to full and equal use of the accommodations, advantages, facilities,  
9 privileges, or services offered.

10 47. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
11 discomfort or embarrassment for the plaintiff, the defendants are also each  
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
13 (c).)

14  
15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide  
17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the  
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
20 plaintiff is not invoking section 55 of the California Civil Code and is not  
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act, which provides for actual  
23 damages and a statutory minimum of \$4,000.

1  
2 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
3 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.  
4

5 Dated: May 16, 2018

CENTER FOR DISABILITY ACCESS

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8 By: 

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10 \_\_\_\_\_  
11 Chris Carson, Esq.  
12 Attorney for plaintiff  
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